

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-3176

UNITED STATES OF AMERICA,

Appellee,

v.

EDWARD BADALIAN,

Appellant.

JOINT MOTION TO GOVERN FURTHER PROCEEDINGS

Pursuant to this Court's Order filed on May 8, 2024, appellant Edward Badalian, and appellee, the United States of America, submit the following motion to govern future proceedings in this appeal. The parties respectfully request that the Court vacate Badalian's convictions under 18 U.S.C. § 371 (Count One) and 18 U.S.C. §§ 1512(c)(2) and 2 (Count Two)—leaving his other count of conviction intact—and remand the case for further proceedings. In support of this motion, the parties state as follows:

1. Following a bench trial, Badalian was convicted on three counts for his conduct at the United States Capitol on January 6, 2021:

(1) Conspiracy to Obstruct an Official Proceeding, in violation of 18 U.S.C. § 371; (2) Obstruction of an Official Proceeding and Aiding and Abetting, in violation of 18 U.S.C. §§ 1512(c)(2) and 2; and (3) Entering and Remaining in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1).

2. On May 8, 2024, before Badalian filed his opening brief, the Court held this case in abeyance pending disposition of *United States v. Fischer*, No. 22-3038, which addressed the scope of § 1512(c)(2) and which had been appealed to the Supreme Court. The parties were ordered to file motions to govern future proceedings within 30 days of the issuance of this Court's mandate in *Fischer*.

3. On June 28, 2024, the Supreme Court decided *Fischer v. United States*, 144 S. Ct. 2176 (2024). On August 7, 2024, this Court issued its mandate in *Fischer*.

4. Given the Supreme Court's decision in *Fischer*, the parties respectfully move to vacate Badalian's convictions under 18 U.S.C. § 371 (Count One) and 18 U.S.C. §§ 1512(c)(2) and 2 (Count Two)—leaving the remaining conviction intact—and remand this case for further proceedings.

CONCLUSION

WHEREFORE, appellant, Edward Badalian, and appellee, the United States of America, respectfully request that the instant motion be granted.

Respectfully submitted,

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/s/

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CERTIFICATE OF COMPLIANCE WITH RULE 27(d)

I HEREBY CERTIFY pursuant to Fed. R. App. P. 32(g) that this motion contains 314 words, and therefore complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A). This motion has been prepared in 14-point Century Schoolbook, a proportionally spaced typeface.

/s/

REUVEN DASHEVSKY
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing motion to be served by electronic means, through the Court's CM/ECF system, upon counsel for appellant, Nicholas D. Smith, Esq., nds@davidbsmithpllc.com, on this 3rd day of September, 2024.

/s/

REUVEN DASHEVSKY
Assistant United States Attorney